IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 5324 of 1995

For Approval and Signature:

HONOURABLE MR.JUSTICE JAYANT PATEL

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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BHARATKUMAR LALBHAI VASA & 2 - Petitioner(s)
Versus
STATE OF GUJARAT & 2 - Respondent(s)

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Appearance :
MR AJ PATEL for Petitioner(s) : 1 - 3.
MR SR GORI, AGP for Respondent(s) : 1 - 2.
MR Y.N.OZA WITH APURVA R KAPADIA for Respondent(s) : 3,

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CORAM : HONOURABLE MR.JUSTICE JAYANT PATEL

Date : 09/11/2006

ORAL JUDGMENT

1. The short facts of the case are that the

petitioners were holding different parcels of land at Kalupur and village Maktampur, which fall under urban agglomeration as per the provisions of the Urban Land(Ceiling and Regulation) Act, 1976 (hereinafter referred to as 'the Act of 1976'). Of course there is the contention of the petitioners that the master plan showing the urban agglomeration was not in accordance with the provisions of the Act of 1976 which shall be dealt with at a later stage. The fact remains that in view of the Act of 1976 and the location of the land and as the land held by petitioners, who are the legal heirs of Lalbhai Vasa (for the sake of convenience, shall be referred as the petitioners), were exceeding the ceiling limit, form under Section 6 of the Act was filed. It appears that pending the consideration of the form, Lalbhai Vasa expired and therefore the draft statement was served upon the petitioners and ultimately on 10.01.1984, following lands were declared as surplus land.

Sr. No.	Village Name	Survey No.	Area
1.	Maktampur	15/1	2855-00
2.	“	15/3	4658-00
3.	“	15/4	3946-00
4.	“	17/1	7790-00
5.	“	17/2	8498-00

Therefore, agricultural land bearing City Survey No. 1319, 1400 and 1401 admeasuring 110 sq. mtr. situated at Kalupur, the land bearing Survey No. 15/1 admeasuring 586 sq. mtr. and survey No. 15/2 admeasuring 304 sq. mtr. both situated at Maktampur were permitted as retainable land.

2. It appears that the appeal was preferred against the said order dated 10.01.1984 of the competent authority before the Urban Land Tribunal being Appeal No. 3/90. In the said Appeal, the Urban Land Tribunal observed that whether the property situated at Kalupur was constructed property or not is not considered properly by the competent authority and therefore, ultimately the Urban Land Tribunal passed the Judgment and Order dated 30.01.1992, whereby the order of the competent authority dated 10.01.1984 was set

aside and the matter was remanded to the competent authority for disposal in accordance with law as well as in light of the observations made in the Judgment of the Urban Land Tribunal. It appears that thereafter, pursuant to the order passed by the Urban Land Tribunal in Appeal, the competent authority once again considered the matter and found that exemption application has been cancelled and no documentary evidence is produced to show the authorised construction over the property so as to exclude it for the purpose of computation and therefore, in absence of any documentary evidence, the land was to be treated as vacant land and therefore, the order dated 25.08.1992 was passed by the competent authority declaring the retainable land of 1000 sq. mtr. comprising of the land situated at Kalupur admeasuring 110 sq. mtr. and the land bearing Survey No. 15/1 at Maktampur admeasuring 890 sq. mtr. and the remaining lands were declared as surplus land. It appears that thereafter, there was also correction order dated 30.02.1993 for proper

description of the land bearing Survey No. 17/2 at village Maktampur, which was also declared as surplus land. The petitioners further carried the matter before the Urban Land Tribunal against the order dated 25.08.1992 of the competent authority being Appeal No. 182/93 and the said appeal for the reasons stated in the order, was dismissed as per the Judgment dated 29.03.1995. It is under these circumstances, the petitioners have approached to this Court by preferring the the petition for challenging the orders passed by the competent authority and its confirmation thereof by the Urban Land Tribunal declaring the land as mentioned in the order as surplus land.

3. Heard Mr. A.J. Patel for the petitioners and Mr. Gori, learned AGP for the State Authorities.

4. For the sake of convenience, the contentions raised on behalf of either side shall be dealt to the extent found relevant by this Court hereinafter.

5. Mr. Patel, learned counsel appearing for the petitioners raised the contention that the land in question at Maktampur was outside the master plan, inasmuch as, on the date when the Act came into force, the master plan was not in existence and he alternatively submitted that such master plan, if any, was not providing for stagewise development of the area and therefore, is not master plan to meet with the requirement of the law as per Section 2(h) of the Act of 1976. In support of his submission, he relied upon the decision of the Division Bench of Bombay High Court in case of **Udhav Tatya Bhopale Vs. State of Maharashtra & Ors. in Writ Petition No. 539 of 1983** decided on 10/13.04.1992 for contending that the master plan as required to meet with the conditions of Section 2(h) of the Act of 1976 must provide for stagewise development of the area and in absence thereof, the same cannot be treated as master plan satisfying the conditions of Section 2(h) of the Act, 1976. He also relied upon the decision of the Apex Court in case of **Smt. Atia Mohammadi Begum, v. State**

of U.P. and others reported at **AIR 1993 SC 2465** read with the subsequent decision of the Apex Court in case of **State of A.P. & Ors. Vs. N. Audikesava Reddy & Ors.** reported at **AIR 2002 SC 5** for contending that on the relevant date, for applying the provisions of the Act, there has to be master plan for the land in question and he further submitted that in case if there is no master plan for the land in question so as to meet with the requirement under Section 2(h) of the Act of 1976, the provisions of the Act would not be applicable nor the land can be declared as surplus land irrespective of the conduct of the petitioners of having filled form under Section 6 of the Act on the impression that the land is falling within the urban agglomeration and the Act of 1976 is applicable.

6. Mr. Gori, learned AGP on the other hand submitted that no such contention was ever raised before the lower authority by the petitioner at any point of time and he further submitted that the petitioners have accepted the

said position as if the land falls within the urban agglomeration in view of the master plan as it then was in existence and therefore, now the petitioners cannot be allowed to raise such contention. He also submitted that the observations made by the Urban Land Tribunal in the order dated 30.01.1992 in appeal proceedings are to the extent that the Suit land has been included in the non-agricultural zone in the master plan and the petitioners have not challenged the said order at any point of time earlier and therefore, the petitioners are precluded from raising such contention. He submitted that as such, the petition is under Article 227 of the Constitution, but even if it is treated as under Article 226 of the Constitution, then also, in view of the aforesaid conduct of the petitioners, such a contention may not be allowed to be raised and therefore, this Court may not entertain such contention raised on behalf of the petitioners qua existence of master plan or the master plan not in accordance with the provisions of Section

2(h) of the Act of 1976.

7. It is not in dispute that the petitioners have proceeded on the basis that the land falls under the urban agglomeration as per the provisions of the Act of 1976. Urban agglomeration came to be identified at the relevant point of time on account of the then master plan in existence on the appointed day, when the Act of 1976 came into force. The father of the petitioners has proceeded on the basis that as the land is under urban agglomeration, the provisions of the Act are to apply and therefore, form No.6 has been filled. It is true that the principles of estoppel would not operate against the statute but, it appears that whether master plan was in existence or not and whether master plan was meeting with the requirement of Section 2(h) of the Act of 1976 or not, as such are the mixed question of law and fact both. If at any point of time, had the petitioners raised objection against the draft statement before the competent authority or even before the Urban Land Tribunal

that the master plan was not available or if available, not in accordance with the provisions of Section 2(h) of the Act of 1976, the matter could have been examined by the lower authorities. It is an admitted position that no such contention was raised before the competent authority in response to the draft statement received by the petitioners. So is the position before the appellate Tribunal. Mr. Gori, is right in submitting that the order dated 30.01.1992 of the Urban Land Tribunal is accepted by the petitioners and not challenged before the higher forum. It has been inter alia observed at paragraph 3 of the said order of the Urban Land Tribunal as under :

> "The effect of the said explanation is that even if a land fulfils the above conditions of agricultural land it would be deemed to be vacant land if such land has been specified in the master plan for a purpose other than agriculture. Thus, when a land is specified in the Master Plan for a purpose other than agriculture, the present user of such land or its classification in the revenue or land records would become irrelevant. In the instant case, the suit land has been included in the non-agricultural zone in the master plan."

Therefore, the aforesaid observations of the Tribunal not only stands on the face of the contentions of the petitioners, but it further appears that the petitioners themselves proceeded on the basis that the master plan is in existence, the land shown in the master plan of the petitioners is included in the master plan and is for the use other than agricultural. Further, even after the Judgment of the Tribunal dated 30.01.1992, when the matter came to be considered after remand, no such contention is raised on behalf of the petitioners before the competent authority. Even before the Urban Land Tribunal, neither any such ground is contended in the memo of the appeal, which is produced by the petitioners themselves at Annexure-E, nor such contention appears to have been raised before the Urban Land Tribunal at the time of hearing of the Appeal. Therefore, it appears that the contention that the master plan either not in existence or if in existence, not in accordance with the provisions of Section 2(h) of the Act of 1976, is by way of an afterthought

and possibly with a view to reopen the question which stood concluded earlier as per the decision of the Tribunal dated 30.01.1992.

8. Even if the petition is treated as under Article 226 & 227 of the Constitution, when the challenge is to the order passed by the lower authority in exercise of their statutory power as quasi judicial authority and when it is a mixed question of law and facts both, in normal circumstances, in the petition under Article 226 of the Constitution, arising from the order of the lower authority, this Court would not permit the petitioners to raise the contention for the first time, which is a mixed question of law and facts. This Court may not upset an order of the lower authority on the question of law raised for the first time for which the lower authority had no opportunity to examine such question after considering the the relevant facts. The aforesaid is coupled with the circumstance that the observations of the Tribunal as per the Judgment dated 30.01.1992 for existence of the

mater plan and the land having been included in the master plan, are not challenged by the petitioners before the higher forum.

9. Further, the finding of the Tribunal to that extent in the Judgement dated 30.01.1992 cannot be set at naught in view of the subsequent view of the Apex Court in case of **Smt. Atia Mohammadi Begum (Supra)** which has been decided on 15.03.1993 and thereafter, in view of the later decision of the Apex Court in case of State of A.P. (Supra). On the same premises, the decision of Bombay High Court upon which the reliance is placed by Mr. Patel in case of **Udhav Tatya Bhopale (Supra)** cannot be made applicable qua the facts of the present case. Therefore the said contention raised by Mr. Patel on behalf of the petitioners is rejected.

10. It was next contended on behalf of the petitioners by Mr.Patel that the order of the competent authority dated 10.11.1984 was set aside by the Urban Land Tribunal as per the

Judgment dated 30.01.1992 and thereafter, a fresh order was passed by the competent authority on 25.08.1992 read with the correction order dated 30.02.1993 and pending the appeal and even thereafter, there is no fresh procedure or notification issued under Section 10(1) onwards either for vesting of the land, fixation of compensation etc. prior to the date of the petition and even thereafter. It was submitted that in the meantime, pending the petition, Urban Land (Ceiling and Regulation) Repeal Act, 1999 (hereinafter referred to as 'the Repeal Act') has come into force and as per the provisions of the Repeal Act, if the land is not vested to the Government under Section 10(3) of the Act or the possession is not taken over, the same is not saved and the proceedings under the Act of 1976 would abate. He submitted that even on the aspects of possession, the same is actually not taken over, inasmuch as, the petitioners were in actual physical possession when the petition came to be filed and this Court when issued rule on 28.07.1995, while

directing the maintenance of status quo also ordered that the petitioners will not make non-agricultural use of the land in question and therefore, it was submitted that the aforesaid was sufficient circumstance to show that the petitioners were in actual physical position of the land in question. He alternatively submitted that in absence of no fresh procedure undertaken after the second order of the competent authority under Section 10(1) of the Act of 1976 onwards, the possession is even if shown as having taken, the same is an unlawful action and therefore, if the authority has illegally or unlawfully taken over the possession, it may be held by the Court that the possession is not lawfully taken over and consequently, the petitioners would be entitled to the benefit of the Repeal Act and the proceedings under Urban Land Ceiling Act would abate and therefore, now the respondent authority cannot insist for enforcement of the order under the Act of 1976 in view of the Repeal Act and therefore, this Court may declare

that the proceedings under the Urban Land Ceiling Act have abated and may grant consequential relief.

11. Mr. Gori, learned AGP vehemently contended that even prior to the filing of the present petition, the petitioners had already transferred the possession to one Mr. Momin in contravention to the provisions of the Act of 1976. He submitted that in the affidavit-in-reply filed by Shri R.K. Rathod, competent authority, dated 13.07.2006, it has been stated that the possession is taken over in pursuance of the earlier notification under Section 10(1) to 10(5) of the Act during the period of 1984-1985. He further submitted that as per the panchnama produced on record, the possession was taken over on 28.06.1995 by the competent authority and the authorities were compelled to take such action because it was learnt by the authority that the petitioners have unauthorizedly transferred the possession of the land and the construction was going on over such

land. Upon the verification of the said aspects, the statements were recorded on 27.06.1995 and it was found that as the possession of the land is transferred by the petitioners to one Mr. Momin and there was also construction made of one bungalow and the plottings were being made, the authority had no option but to immediately take possession of the land in question. He submitted that the action was taken by the authority under the Act of 1976 for taking over of the possession not only for protecting the land which vests to the Government, but also with a view to see that innocent citizens may not be duped by the petitioners or the persons to whom the possession was transferred on the alleged ground of development agreement. He therefore, submitted that the possession of the land is with the Government and even the Division Bench of this Court has also accepted the said position while allowing Letters Patent Appeal No.814 of 2000 which was preferred against the earlier order dated 28.06.1999 passed by this

Court (Coram : Y.B. Bhatt) in Special Civil Application No. 5324 of 1995. He therefore, submitted that as the possession of the land in question is with the Government, the proceedings under the Act of 1976 would not abate in view of the Repeal Act and, therefore, this Court may examine the merits of the petition as if the action is saved and the legality and validity of the order passed by the Competent authority and its confirmation thereof by the Urban Land Tribunal may be upheld.

12. Mr. Gori, Learned AGP also strenuously contended that the petitioners are the persons who have openly defied the law i.e. the Act of 1976. He submitted that if the petitioners were holding the surplus land unless the land is declared as retainable land, the transfer even of the possession could not have been made. He submitted that as per the authority as such, the land is transferred after receipt of consideration, but as there is no record except the statement, the fact gets established to the

extent of transferring the possession of the land. Such transfer of possession was expressly prohibited by the Act of 1976 and the petitioners having defied the law openly by transferring the possession to the headstrong persons, the petitioners should not be allowed to invoke the equitable jurisdiction of this Court under Article 226 of the Constitution for challenging the orders passed by the competent authority or the Urban Land Tribunal as the case may be. He therefore, submitted that this Court while examining the legality and validity of the orders passed by the lower authority, may reject the petition outright in view of the aforesaid conduct of the petitioner having defied the law.

13. It is not in dispute that the earlier proceedings under Sections 10(1) to 10(5) for the declaration of the land as surplus land and for vesting and for fixing the compensation were issued in pursuance to the order of the competent authority dated 10.01.1984, which was set aside by the Urban Land Tribunal as per the

judgement dated 30.01.1992 in Appeal No. 3/1990. The basis of the notification under Sections 10(1) to 10(5) of the Act of 1976 for the various stages including for vesting and compensation was the first order of the competent authority dated 10.01.1984. If the basis or the order on the basis of which the action is taken under section 10(1) to 10(5), is set aside by the Urban Land Tribunal, it cannot be said that the action continues to remain in existence. The Urban Land Tribunal in its judgement dated 30-1-1999 at paragraph 4 issued the operative direction, relevant of which is as under :

> "Therefore, the impugned order has to be set aside. Accordingly, the impugned order dated 10-1-1984 is hereby quashed and the matter is remanded to the Court below for disposal in accordance with law as well as in light of the observations made in the forgoing paragraphs."

14. Therefore, when the Urban Land Tribunal in its judgement dated 30.01.1992 has expressly quashed the order passed by the competent authority

dated 10.01.1984, the life of the said order of the competent authority would end and if any order is to prevail, even as per the principles of Doctrine of Merger, the same would be the order of the Urban Land Tribunal. If the foundation of the action under section 10(1) to 10(5) has gone or the life thereof has ended or terminated, the only consequence would be that the life of the action based thereof which in the present case is under section 10(1) to 10(5) would automatically come to an end.

15. Further, even after the remand, the competent authority has passed a fresh order on 25.08.1992, read with the correction order dated 30.02.1993, therefore, if the further actions were to be taken under section 10(3) to 10(5) of the Act, the same were required to be taken pursuant to the second order passed by the competent authority after remand. It is an admitted position that there is no notification issued or any action taken by the competent authority under section 10(1) to 10(5) on the

basis of the order dated 25.08.1992 read with the order dated 30.02.1993 passed by the Competent authority for declaration of certain lands as surplus. It is not the case where the very land which were ordered to be declared as the surplus land pursuant to the first order of 10.01.1984 declared as surplus land in the second order passed by the competent authority dated 25.08.1992 read with order dated 30.02.1993. But the retainable land as per both the orders are different and consequently, the land declared as surplus land in both the orders are different. The aforesaid aspect is narrated earlier while recording the facts and therefore, no detailed repetition may be required but suffice it to say that as per the first order, in view of the lands bearing Survey No.15/1 admeasuring 586 sq. mtrs., and bearing Survey No.15/2 admeasuring 304 sq. mtrs., both situated at Maktampur and the lands situated at Kalpur admeasuring 110 sq. mtrs., total 1000 sq. mtrs., held as retainable land, the remaining lands were declared as surplus land, whereas as per

the second order of the competent authority dated 25.8.1992 read with the correction order the land bearing Survey No.15/1 admeasuring 890 sq. mtrs., and the land situated at Kalpur admeasuring 110 sq. mtrs., total 100 sq. mtrs., were declared as retainable land, the remaining lands were declared as surplus lands. Consequently, the land bearing Survey No.15/2, which was earlier declared as retainable land, in view of the second order is delcared as surplus land and qua Survey No.15/1 the area of the surplus land is reduced by 304 sq. mtrs. Therefore, as the lands, in any case, which are declared as surplus lands are not the same, the contention raised on behalf of the State Authorities by Mr.Gori that the fresh notification under Section 10(1) to Section 10(5) was not required, even otherwise also cannot be accepted.

16.Mr.Gori, learned AGP attempted to submit that in the order of the Urban Land Tribunal dated 29.3.1995, it has been observed that the

proceedings under Section 10(5) have been undertaken and, therefore, it was submitted by Mr.Gori that the action of the State Government upto Section 10(5) has been upheld by the order of the Tribunal and, therefore, it was not required for the authority to undertake the fresh procedure of issuance of the notification from the stage of Section 10(1) to Section 10(5) of the Act, 1976. It is true that the Tribunal in the order dated 29.3.1995 has referred to the factum of process undertaken upto Section 10(5), but such observations cannot be read as no fresh procedure is required to be undertaken after quashing of the first order of the competent authority after the judegement of the Tribunal dated 30.1.1992. As such before the Tribunal in the proceedings of the Appeal No.182 of 1993 that question as to whether fresh notification is required not not from the stage of Section 10(1) upto Section 10(5) after the second order of the competent authority did not arise and, therefore, such recording of the fact of the earlier process undertaken upto the stage of

Section 10(1) of the Act 1976 cannot be read as nullifying the procedure required to be followed by the authority under Section 10(1) upto Section 10(5) of the Act after the second order passed by the competent authority dated 25.8.1992 read with the correction order dated 30.2.1993 and, therefore, the said contention raised on behalf of the State by Mr.Gori, learned AGP cannot be accepted.

17. The language of Section 10 provides for the words “competent authority shall” and, therefore, in its literal meaning be read as mandatory. Further Section 10(1) provides for issuance of a notification after the service of the final statement under Section 9 to the person concerned and the notification should contain the particulars of the vacant lands held by the person concerned in absence of the ceiling limit and such vacant land to be acquired by the concerned State Government and to invite the claims of all persons interested in the vacant land, which is to be acquired by

the State Government. Further, publication of such notification is required for the information of the general public and the same is required to be published in the official gazette and any such other additional manner as prescribed by the Rules. Rule 6 of the Urban Lands (Ceiling and Regulation) Rules, 1976 additionally provides for publication by affixing the copy of the notification in the conspicuous place in the office of the competent authority and by affixing the copies of the notification in the conspicuous place in the offices of the District Collector, Tahasildar, and the Municipal Commissioner within whose local limits the vacant land is situated. Therefore, if the provisions of Section 10(1) are read with the Rule 6 of the Rules of 1976 it does appear that the requirement of publication of notification is a mandatory requirement. Further, as per Section 10(2) after the process of publication of the notification is undertaken under Section 10(1) of the Act, the language used is that the competent authority shall

determine the nature and the extent of such claims and pass such orders as it may deem fit. Therefore, such powers for adjudication of the claim are also having quasi judicial character, which cannot be read as to be dispensed with. Above all, the procedure as required under Section 10(3) of the Act provides for the vesting of the land in the State Government, free from all encumbrances by publication of notification in the official gazette. Therefore, in any case, until the notification under Section 10(3) of the Act is published in the official gazette for vesting of the land, the land would not vest in the State Government, free from all encumbrances. It is only after the process undertaken under Section 10(1) and, in any case, after Section 10(3), the intimation is required to be given under Section 10(5) to surrender or deliver the possession of the vacant land and upon failure to do so, the possession of the land can be taken over by the authority under Section 10(6) of the Act. The aforesaid provisions of the procedure under

Section 10 of the Act of 1976 providing for the procedure for taking over and of acquiring the property of the citizen appears to be mandatory. Therefore, I cannot accept the contention raised on behalf of the authority by Mr.Gori that the principles of doctrine of necessity can be made applicable for supporting the action of the authority for taking over the possession under Section 10(6) without following the procedure under Section 10(1) to Section 10(5) of the Act. At this stage, it would be worthwhile to refer to the provisions of Article 300A of the Constitution of India, which reads as under:

> "**Article 300A – Persons not to be deprived of property saved by authority of law;** No persons shall be deprived of his property saved by authority of law."

18. If the legislature has provided for the action to be taken for taking over the possession under Section 10(6) of the Act only by a particular mode and after following the mandatory procedure from the stage of Section 10(1) upto Section 10(5) of the Act and if such mandatory procedure

is not followed, the action of taking over of the possession even if considered for the sake of examination having been taken over on 28.6.1995 as per the panchnama, copy whereof is produced at Annexure R-VII, the same would be rendered without authority under the law as per the Act of 1976 and hence, such action of taking over of the possession is unlawful and without following the mandatory procedure and, therefore, ultra vires the powers of the competent authority under the Act of 1976. The reference may be made to the decision of this Court in case of **"State of Gujarat vs. Gordhanbhai Becharbhai Patel and Others", reported in 1995(2) GLH, 97,** wherein it was, inter alia, observed by this Court at para 5 that if the order of the competent authority has been quashed and set aside all consequential actions which have been taken in the meantime have to be reversed and the functionaries under the Act of 1976 have to abide by the order passed by the appellate authority and if any authority has taken steps on the basis of an

order, which is subsequently set aside, those steps to be reversed and the process of reversal must be followed, so as to take the order of the appellate authority to its logical ends. It would also be worthwhile to refer to the decision of the Apex Court in case of **"State of Maharashtra and Anr. vs. B.E. Billimoria and Ors.", reported in 2003(7) SCC, 336,** wherein the Apex Court through Hon'ble Mr.Justice S.B. Sinha in the concurring observations has observed that the Act of 1976 is an expropriatory legislation and should, therefore, be required to be construed strictly. Therefore, the only inevitable conclusion is that the possession of the lands in question, which are declared as surplus lands taken over by the State Officials is without there being any authority under the law and, therefore, legally it cannot be said that the possession is taken over by the authority on the date when the Repeal Act came into force.

19. As such the doctrine of necessity cannot apply in the case where the legislature has expressly

provided a particular act to be undertaken in a particular manner for exercise of the authority to take over the property of the citizen on the face of constitutional provisions under Article 300A read with the mandatory language of Section 10(1) upto Section 10(5) of the Act. Such doctrine may be of the relevant consideration in the event the Court is required to examine the question of awarding of compensation for deprivation of the property of a citizen. At that stage, the Court may also examine the aspects as to whether the authority acted bonafide under the mistaken belief of law with a view to protect the harassment or duping or cheating of innocent citizen, who otherwise would have been led by the impression given by the holder of the land for floating of any scheme. As such questions have not arisen so far, nor is the same the subject matter of the present petition, I find that no further observations in this regard are required, except leaving the matter to be decided at that stage in the event such contingencies arise. But for

supporting the said action of the State Officials, the attempt made by Mr.Gori, learned AGP cannot be countenanced.

20. It is an admitted position that no notification has been issued under Section 10(3) of the Act by the competent authority in pursuance of the second order passed by the competent authority dated 25.8.1992 read with the correction order dated 30.2.1993. The aspects as to ending of the life of the earlier notification based on the first order dated 10.1.1984 after quashing of the same, is already dealt with earlier. The mandatory requirement of publication afresh under Section 10(3) is also dealt with and concluded by this Court as per the observations made in earlier paragraph. Therefore, if it is an admitted position that there is no fresh notification issued under Section 10(3) of the Act for vesting of the surplus lands as per the order passed by the competent authority dated 25.8.1992 read with the correction order dated 30.2.1993, it cannot be said that the same have vested to the State Government.

21. The Repeal Act provides for saving of the action under Sub-section (3) of the Act of 1976, if the land has vested to the State Government under Section 10(3) of the Act and the possession of which has been taken over by the State Government, but neither of the said contingencies was in existence on the date when the Repeal Act came into force. Therefore, if there is no vesting under Section 10(3) of the Act and the possession is taken over without there being authority under the law as concluded in the earlier paragraph, the case would fall under Section 4 of the Repeal Act for abatement of the proceedings under the Act of 1976.

22. It is true that pending the petition the stay was in operation and, therefore, the authority could not have published the notification after the status-quo was ordered by this Court for the first time on 4.7.1995. However, for applying the provisions of Repeal Act the Court has to consider the position as prevailing on the date when the Repeal Act came into force. Had the action been taken prior to the order of status-

quo in the present petition and if found legal by this Court, the action could have been saved. Further, nothing prevented the authority to apply to this Court pending this petition prior to the Repeal Act to permit the publication of the notification. The fact remains that on the date when the Repeal Act came into force, neither the land had vested to the State Government, nor was the possession taken over under the authority of law. Therefore, merely because the order of status-quo operated pending the petition, is no sufficient ground for not to apply the provisions of the Repeal Act either for saving of the action under the Act of 1976 or for the abatement of the proceedings under the Act of 1976 as per the Repeal Act and, hence, the contention of Mr.Gori that this Court may examine the matter for testing the legality and validity of the order passed by the competent authority and the confirmation thereof by the Urban Land Tribunal on the face of the Repeal Act cannot be entertained and deserves to be rejected.

23.In view of the aforesaid peculiar facts and circumstances that the mandatory procedure for exercise of lawful authority for taking over of the possession was not followed by the State officials and in view of the Central Legislation of the Repeal Act having been adopted by the State Government, I find that if the contention as sought to be canvassed on behalf of the State Government by Mr.Gori, learned AGP is accepted for not permitting the petitioner to invoke the extraordinary equitable jurisdiction of this Court, the consequence would be that the action of taking over the possession by the State officials without there being any lawful authority would continue to operate and the same would further operate in absence of power or vesting of the land in the State Government as per the Section 10(3)f the Act of 1976. Further, in any event, in spite of the Repeal Act not saving the action, such illegal action by the State officials may continue to operate. Therefore, with a view to create a situation where the lawful action is allowed to operate

and unlawful actions are not countenance by the Court, keeping in view the spirit of Article 300A of the Constitution of India, I find that it would not be a case to throw away the petition of the citizen under Article 226 of the Constitution of India merely because as per the authorities, some development agreement was entered into for the land in question and the possession was parted with for the development of the land. As such the said aspect is not admitted by the petitioner, but even if such contention raised on behalf of the State Government authorities by the learned AGP is considered for the sake of examination, I find that considering the peculiar facts and circumstances that if the petition is not entertained or the petitioner is not permitted to invoke the jurisdiction of this Court, the action of the State Officials without there being any lawful authority would continue to operate. Therefore, the said contention of Mr.Gori deserves to be rejected.

24.Mr.Gori, learned AGP did attempt to submit that the petitioner suppressed the material fact that the possession of the land is parted with by them to the third party, Shri Momin and others and the construction activity was also going on. It is only when the notice has been issued in this petition, such facts are brought on record by the respondent authority and, therefore, it has been submitted that this Court may not grant any relief to the petitioner due to suppression of material fact, more particularly for parting of the possession and of entering into the development agreement and the construction.

25.The principal challenge is to the order of the competent authority and of the Urban Land Tribunal. Such aspects may have the relevance had the Repeal Act in the meantime not come into force. Further, in view of the observations and conclusion recorded hereinabove, if the land has not vested to the State Government in absence of notification under Section 10(3) of the Act, it cannot be said that the possession of the petitioner was unlawful. Further, no additional

equities are claimed in the petition contending that the development agreement is entered into or that third party rights have intervened pending the inaction by the authority. Therefore, I find that if the action of taking over of the possession by the State Officials is without there being any lawful authority and if the land has not vested to the State Government, such aspect of alleged suppression is not such which would lead the Court to throw away the petition of the citizen when this Court has concluded that the land did not vest to the Government, nor was the possession taken over under the lawful authority. Therefore, I find that the said contention raised by Mr.Gori does not deserve to be accepted.

26. In view of the aforesaid observations and discussions, it is hereby observed and declared that the proceedings under the Act of 1976 and the action taken thereunder are not saved and shall stand abated in view of the Repeal Act of 1999. Consequently, as the action and the orders under the Act of 1976 are not saved and

the proceedings have been abated, this Court is not required to examine the legality and validity of the impugned orders passed by the competent authority and its confirmation thereof by the Urban Land Tribunal for declaration of the land as surplus land, since they do not survive any more in view of the Repeal Act.

27. The petition is allowed to the aforesaid extent. Rule partly made absolute to the aforesaid extent. Considering the facts and circumstances, there shall be no order as to costs.

28. Mr.Gori, learned AGP, after the pronouncement of the order, prayed that the interim relief granted by this Court, which is in operation through out may be continued for some time, so as to enable the State to approach before the higher forum. Considering the facts and circumstances and more particularly with a view to see that no additional equities are created in the meantime until the State Government approaches before the higher forum, the interim

relief granted earlier shall continue to operate for a period of four weeks from today.

9.11.2006 **(Jayant Patel, J.)**

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